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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,937	12/11/2003	James C. Bridges	5505B	7307

7590

11/02/2006

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EXAMINER
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JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/732,937	<b>Applicant(s)</b> BRIDGES ET AL.	
	<b>Examiner</b> Cheryl Juska	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,6-33 and 35-39 is/are pending in the application.
- 4a) Of the above claim(s) 29 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6-28,30-32 and 35-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed August 21, 2006, has been entered. Claims 1, 6, 14, 15, 19, 21-23, 25-28, 30-32, and 36 have been amended as requested. Claims 2-5 and 34 have been cancelled, while new claims 37-39 have been added. Thus, the pending claims are 1, 6-33, and 35-39, with claims 29 and 33 being withdrawn as non-elected.
2. Said amendment is sufficient to withdraw the 112, 2<sup>nd</sup> rejection set forth in sections 5-7 of the last Office Action.

### ***Claim Objections***

3. Claim 37 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim, to place the claim in proper dependent form, or rewrite the claim in independent form. Claim 37, which limits the higher melting point fiber constituent to being a staple fiber, depends from claim 1, which already limits said fiber constituent to being "non-continuous." Since the terms "staple" and "non-continuous" are synonymous, claim 37 is not further limiting. Note according to the Complete Textile Glossary, "The term staple (fiber) is used in the textile industry to distinguish natural or cut length manufactured fibers from filament." In other words, if a fiber is non-continuous, then it is of "staple" length.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 6-28, 30-32, 35, and 36 stand rejected under 35 USC 103(a) as being unpatentable over WO 88/03969 issued to Hackler in view of US 2003/0014823 issued to Biestline et al., US 5,116,243 issued to Willis, and/or US 5,035,018 issued to Robbins et al. as set forth in section 9, pages 3-7 of the last Office Action.

Applicant has amended independent claim 1 to limit (a) the higher melting point fiber constituent to being non-continuous or staple length, (b) the lower melting point thread is added to the high melting thread during a doubling or winding process, and (c) the two threads form a combined thread during spinning or twisting steps. However, said amendment is insufficient to overcome the standing rejection. Specifically, as noted in the last Office Action, Hackler teaches staple fiber yarns.

Additionally, as previously argued with respect to claim 31, Hackler does not explicitly teach the steps of forming a thread of a non-continuous high melt fiber, passing the thread through a doubling or winding process wherein a low melt fiber or thread is added, and spinning or twisting to form a combined thread or yarn. However, these claimed steps are well known yarn formation methods in the art of textiles. Applicant is hereby given Official Notice of this fact. Thus, it would have been obvious to one skilled in the art to select an alternative method of yarn formation in order to produce the blended yarn of Hackler. Motivation to do so would be to produce a variety of yarn textures and sizes desired for a particular carpet style. Therefore, claims 1, 6-28, and 35 stand rejected.

Independent claim 30 has also been amended to limit (a) the higher melting point fiber constituent to being staple length or non-continuous, (b) the lower melting point filament is added to the high melting thread during a doubling or winding process, and (c) the two threads form a combined thread during spinning or twisting steps. As such, claim 30 also stands rejected for the reasons of record.

Independent claim 31 has been amended to limit the higher melting thread to being at least a first higher melting fiber constituent and a wool fiber constituent. However, as argued in the last Office Action with respect to claims 13 and 16-18, Hackler is silent with respect to the use of wool fibers or wool blends. However, the use of wool in carpet pile is well known in the art. Applicant is hereby given Official Notice of this fact. As such, it would have been obvious to one skilled in the art to employ wool fibers or a blend containing wool fibers for the base fiber of Hackler. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Therefore, claims 31 and 36 stand rejected.

Regarding claim 32, as argued in the last Office Action, Hackler does not explicitly teach the steps of forming a fiber blend from a high melt fiber, passing said blend through a ring spinning process wherein a low melt fiber is added to form a combined thread. However, these claimed steps are well known yarn formation methods in the art of textiles. Applicant is hereby given Official Notice of this fact. Thus, it would have been obvious to one skilled in the art to select an alternative method of yarn formation in order to produce the blended yarn of Hackler. Motivation to do so would be to produce a variety of yarn textures and sizes desired for a particular carpet style. Therefore, claim 32 also stands rejected.

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6. Claims 37 and 38 are rejected under 35 USC 103(a) as being unpatentable over the cited Hackler, Biestline, Willis, and/or Robbins references as applied to claim 1 above.

New claims 37 and 38 are also rejected over the cited prior art since Hackler teaches staple fiber yarns.

7. Claim 39 is rejected under 35 USC 103(a) as being unpatentable over the cited Hackler, Biestline, Willis, and/or Robbins references as applied to claim 31 above and in further view of US 5,571,444 issued to Fisher et al., US 6,225,403 issued to Knowlton, and/or US 2002/0012764 issued to Magee et al.

New claim 39 limits the higher melting thread of claim 31 to being approximately 75% by weight nylon fibers and approximately 25% by weight wool fibers. Hackler, Biestline, Willis, and Robbins fail to teach such a blend. However, said blends are well known in the art of carpets. For example, Fisher teaches 80% wool/20% nylon blends and 70% wool/30% nylon blends are commonly employed in the carpet art (col. 10, lines 22-24). Knowlton teaches a carpet yarn made of an 80/20 wool/nylon blend (col. 11, lines 55-56), while Magee teaches a yarn of 20/80 wool/nylon blend (section [0042]). Thus, it is well known in the art to employ yarns having a blend of approximately 25% wool with nylon for pile yarns in carpets. Hence, it would have been readily obvious to one skilled in the art to select the claimed nylon/wool blend for the base yarn (i.e., high melt fiber) of the Hackler reference since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Therefore, claim 39 is rejected as being obvious over the cited prior art.

***Response to Arguments***

8. Applicant's arguments filed August 21, 2006, have been fully considered but they are not persuasive.

9. Applicant traverses the rejections based upon Hackler by asserting that the reference blends the low melt staple fiber (i.e., binder fiber) and high melt staple fiber (i.e., base fiber) together before processing into a yarn (Amendment, page 8, 2<sup>nd</sup> and 3<sup>rd</sup> paragraphs). Applicant asserts this is different from the presently claimed invention wherein the low melt fiber is incorporated by doubling or winding (Amendment, paragraph spanning pages 7-8, page 8, 2<sup>nd</sup> – 4<sup>th</sup> paragraphs). The examiner does not necessarily contest that the processes are different. However, the rejection is not an anticipation rejection, but rather an obviousness rejection. To reiterate, it would have been readily obvious to one skilled in the art to select another known method of forming a blended yarn other than those methods explicitly taught by Hackler. Applicant was previously given Official Notice that doubling or winding processes are well known yarn formation methods (Office Action filed February 24, 2006, page 7, 2<sup>nd</sup> paragraph). Applicant's failure to contest said Official Notice has been taken as a concession. Therefore, as previously argued, it would have been readily obvious to one skilled in the art to select an alternative method of yarn formation in order to produce the blended yarn of Hackler, wherein said yarn can have a variety of constructions, textures, and sizes.

10. Applicant also traverses the rejections by arguing the recitation of wool fibers or such high wool content distinguishes over the prior art of record (Amendment, page 8, 5<sup>th</sup> paragraph). Specifically, applicant asserts the present situation is different from that of *In re Leshin*, 125 USPQ 416 since the selected material (i.e., wool) is not recognized as being suitable for the

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specific intended use of the present invention (i.e., a low melt fused carpet construction adapted for jet dyeing) (Amendment, page 9, 1<sup>st</sup> paragraph – paragraph spanning pages 9-10). The examiner respectfully disagrees. If the intended use of the present invention is so limited, rather than the more general intended use of pile yarns of carpets, then there would be no need for an obviousness rejection. In other words, applicant is limiting the intended use to the specific invention rather than the general application of the material. The art clearly recognizes the suitability of wool fibers and nylon/wool blends for carpet pile. The selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 65 USPQ 297. See also *In re Leshin*, 125 USPQ 416, which held that selection of a known plastic to make a container of a type made of plastics prior to the invention was held to be obvious. Furthermore, *Ryco, Inc. v. Ag-Bag Corp.*, 8 USPQ2d 1323 held that a claimed agricultural bagging machine, which differed from a prior art machine only in that the brake means were hydraulically operated rather than mechanically operated, was held to be obvious over the prior art machine in view of references which disclosed hydraulic brakes for performing the same function, albeit in a different environment. With respect to an art recognized suitability for an intended purpose, it is reiterated that one cannot not limit the intended use of a material to the actual invention claimed. Rather, said intended use is held to a more general standard. Therefore, applicant's argument is found unpersuasive.

11. Applicant also argues that Hackler lacked recognition of non-synthetic fibers, such as wool, as being suitable for the invention (Amendment, page 10, 1<sup>st</sup> and 2<sup>nd</sup> paragraphs). In response, the rejections are not based upon Hackler alone, but rather Hackler in view of Official



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Notice and Hackler in view of the cited Fisher, Knowlton, and Magee references. As such, Hackler need not recognize that wool would be suitable for the invention.

12. With respect to applicant's assertion that the present rejections are based upon improper hindsight (Amendment, paragraph spanning pages 10-11), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The present rejections are based upon knowledge known in the art and the specific teachings of the prior art rather than applicant's own disclosure.

13. Therefore, applicant's arguments are found unpersuasive and the above rejections stand.

### ***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

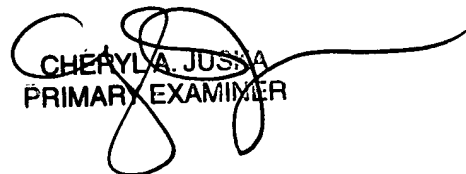
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
October 27, 2006